

# Best Practices Committee Presentation Of Merit System Principles

Law	Who Covered	Classes of Protected People	Enforcement Agency	Guide Resources
Civil Rights Act of 1964 & 1991 Title VII	Federal, State and local govt.; Private./ 15; Schools; Employment agencies	Race, Color, Religion, Nat'l Origin, Sex	EEOC	Uniform Guidelines on Selection Procedures; Sex, religious and Nat'l Origin guidelines
Age Discrimination in Employment Act of 1967	State & Local Governments	Over 40	EEOC	Interpretations of the Age Discrimination in Employment Act
Americans with Disabilities Act of 1990 ADA	State & Local Governments	Otherwise qualified w/ a Disability; Reasonable Accommodation	EEOC	ADA Employment Regulations; Def of Disability; Pre-Employment disability related questions & Medical Exams
Rehabilitation Act of 1973	W/ Federal Contracts > \$2500.00	Disability	DOL OFCCP	Affirmative Action Regulations on Handicapped Workers
Fair Labor Standards Act	State & Local Governments	Wages	DOL	DOL wage guidelines; Exempt, non exempt; Management
EEO & FEHA & DOL		Retaliation Whistle Blowing	EEOC DFEH DOL	

# Exercise

- Large public agency was sued under Title VII for Race discrimination – the court got the case in 1970
- 5 departments: Labor, Coal Handling, Operations, Maintenance, & Laboratory
- The highest pay in labor was lower than the lowest pay in any of the others
- They had a test or HS diploma to be hired or promoted to any but Labor

# Exercise (continued)

- They did not intend to discriminate; in fact the Supreme Court took note that they financed 2/3 of the cost of tuition for HS training so they were showing “good faith”
- The professionally developed test was not intended to screen out protected persons
- Nothing in Title VII precludes the use of tests
- You are faced with an employer who is being sued even though they did not intend to discriminate. In fact they took a good faith action by offering to help by paying for education

# Adverse Impact

- The 4/5 Rule (80%)
- Setting Pass Points and Score Group
- Request and Use Statistical Ethnicity and Gender Reports to apply 4/5 Rule

# Adverse Impact Analysis

- Based on the differences in selection rates (percent of applicants hired):
  - Adverse impact looks at the impact of the **hiring process**
  - Also, consider it for pass points and score grouping
  - Look at Statistical Reports – Neo Gov
  - If the percent of men hired is 50% and the percent of females is 8%, there is a possibility of adverse impact
  - $40 = 80\% \text{ of } 50$
  - Therefore, 8% is much less than 80% of 50%

# Adverse Impact Analysis (continued)

- Example: Job Class; Paralegal

Male Applicants	Female Applicants	Males Hired	Females Hired	Male % Hired	Female % Hired
50	60	25	5	50%	8%

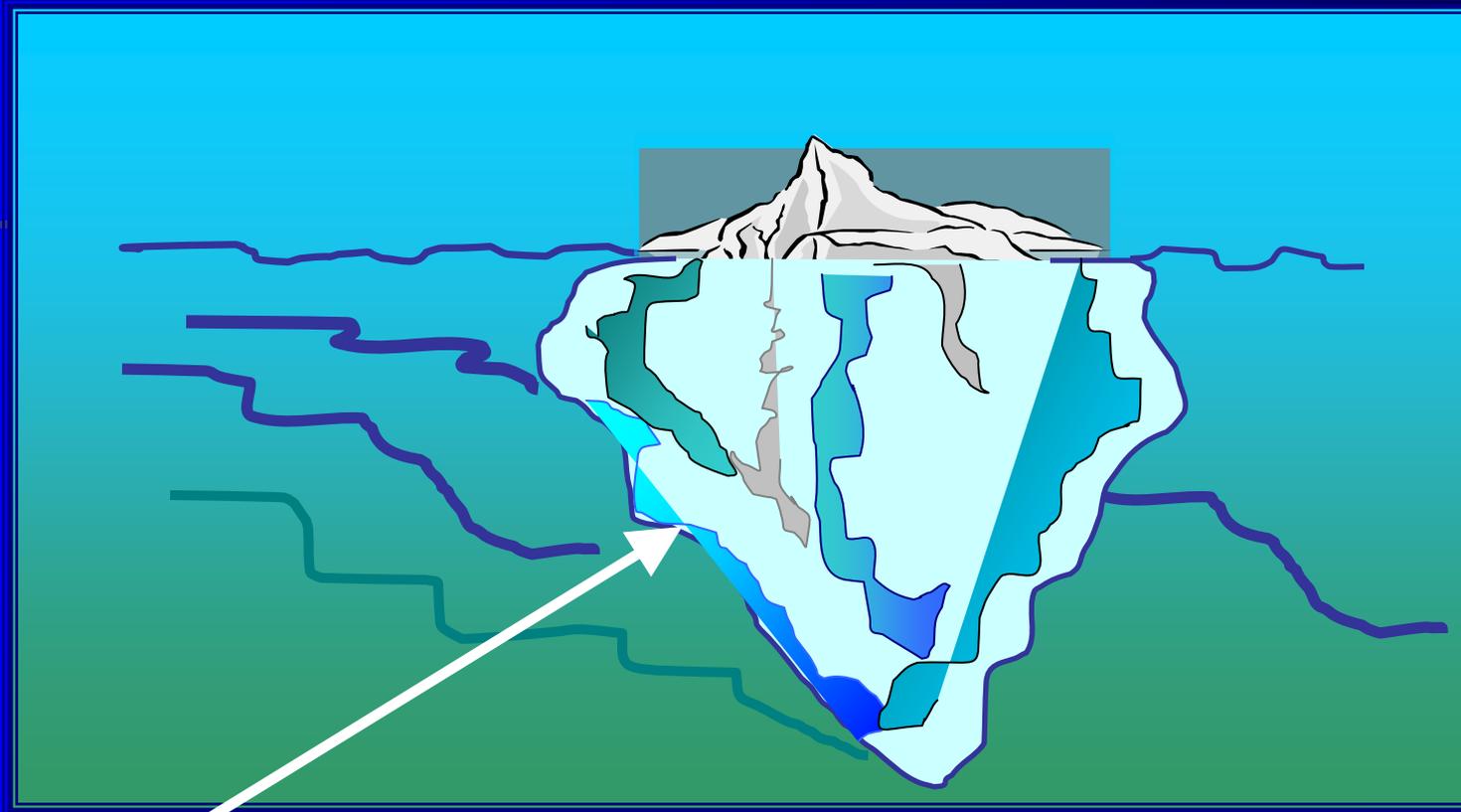
- $25 \text{ divided by } 50 = 50\%$  and  $5 \text{ divided by } 60 = 8\%$



# Adverse Impact Analysis (continued)

- Be sure not to lump all protected categories together. Calculate the percent for each pair of categories individually. First pick the category with the highest percent and then compare each category against it.
- If you have a question, always ask your supervisor.
- Best Practices Committee members are also available for consult.

# The Tip of the Iceberg - Potential Problems



The types of liabilities I discussed are only the very tip of the iceberg. The potential problems involve Statutory, as well as Case Law Liabilities. That is why the State and County implemented the Selection Rules to shield us. You are our first line of defense against suits and EEO/DFEH Complaints. Your defenses are the Rules.

# MERIT SYSTEM PRINCIPLES

## Artificial Barriers

# Artificial Barriers

- Ensure job requirements are relevant and not set arbitrarily or artificially
- Job requirements must be justified by business necessity

# Artificial Barriers

- Employers must not deny equal employment opportunity (EEO), inadvertently or from personal bias
- Check practices frequently for systematic or inherent discrimination

# Examples of Artificial Barriers

- Educational Requirements
- Physical Requirements
- Possession of a Driver's License

# Minimum vs. Desired Qualifications

- Desirable qualifications are not minimum qualifications
- Be very clear and state exactly what knowledge and skill level you are seeking
- Example: Airport experience is desirable

# Bona-Fide Occupational Qualification (BFOQ)

- Criterion that appear to be discriminatory but can be justified by business necessity
- Example: Heavy Lifting
  - Firefighter – Lift body to save a life - may appear discriminatory that only male applicants can apply
  - BFOQ because heavy lifting is needed to save lives. Test for lifting is defensible.

# Summary for Avoiding Artificial Barriers

- Document Business Necessity
- Explore Alternative Practices
- Ensure Across-the-Board Practice
- Ensure that Business Necessity is not Stereotypical Thinking, Arbitrary Standard, or Tradition

# Where to Get More Information

- Other training sessions
- List books, articles, electronic sources
- Consulting services, other sources
- Handout of reference materials

# Fair and Open Competition (Equal Access)

# What factors should we consider for the recruitment process?

- Are we in compliance with external and internal standards (EEO, FEHA, Recruitment Rules, Merit Principles)
- Other things to consider
  - What is the best approach for the County
  - Ethical decision making
  - Innovative approaches including Neogov
  - Measures to evaluate success are part of the mix

Key principle - assessment devices used are job related, fair and consistent.

# Tools and References

# Merit Principle 1 – Article 3 17111. Recruitment

- Recruitment effort assures open competition for initial career service appointment

# Merit Principle 1 – Article 3 17112. Selection

- Selection procedures, including appropriate ranking for entry to the career service, shall be job related and shall maximize to the extent practicable, **validity, reliability and objectivity.**

# Selection Rules

## Article II – Recruitment and Announcements

- Life of recruitment according to recruitment type (Open, Promotional, Agency only)
- Recruitment Modification Rules

# Selection Rules

## Article III – Application

- Filing of applications
- Qualifications of applicants
- Disqualification of applicants

Are selection criteria resulting  
in selection of high quality  
employees?

# Article IV – Selection Procedures

- Type of Selection Procedures  
(Promotional, Agency Only, or Open)
- Content of Selection Procedures
  - Written Tests
  - Qualifications Appraisal Panels
  - Performance Tests
  - Appraisal of competencies

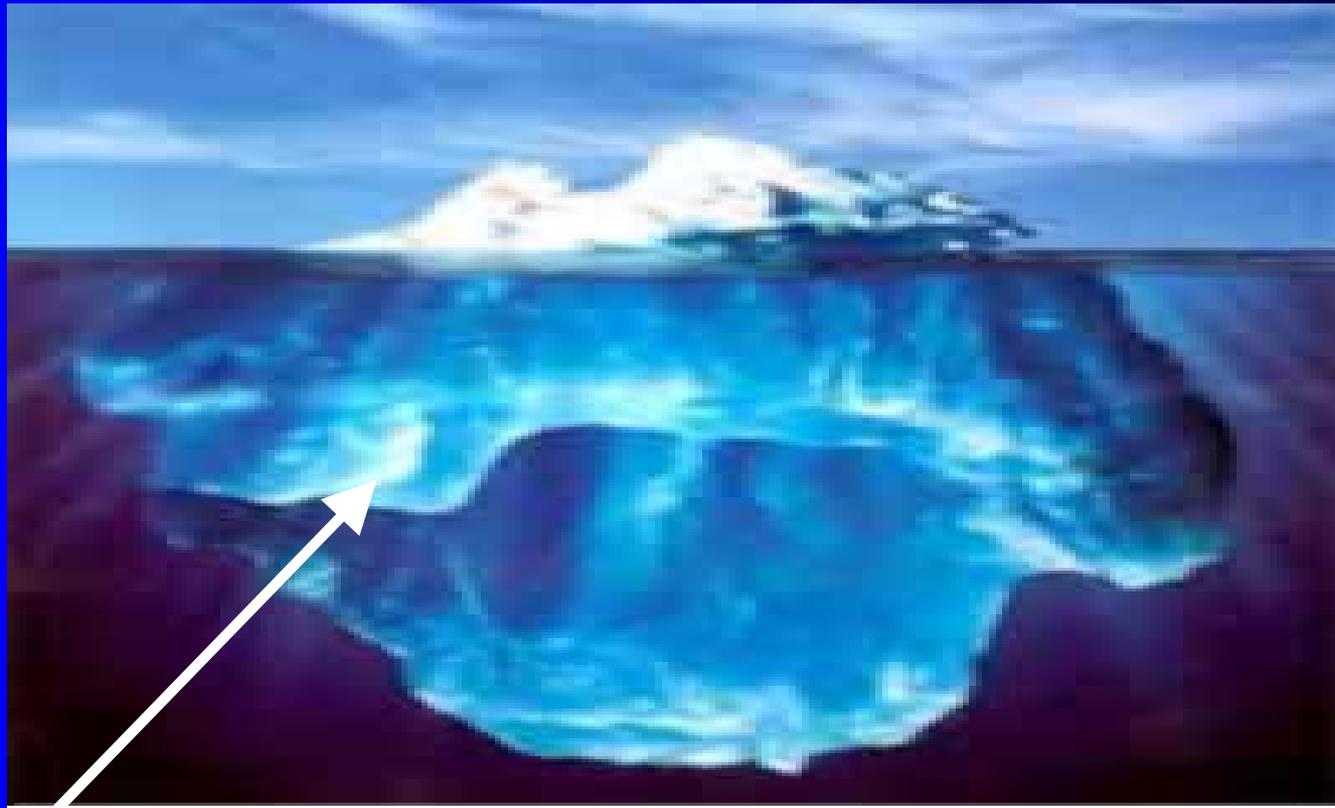
Remember - competition must always go beyond an applicant meeting the minimum qualifications. Applicants must go through a complete and fair competition before establishing the Eligible List!

How is your Agency ensuring that you are finding the best quality of applicants within the Selection Rules?

# Merit System Principles

Selecting and Promoting  
Employees To Assure  
Consistency and Equal  
Opportunity

# The Tip of the Iceberg – The Competency Conundrum



Competencies include what you see as well as those qualities that fall below the surface and are not always that apparent. These qualities are not as easily defined but often are described as the “soft skills” a person possesses.

# Merit Principle 1, Article 3, 17110

- Employees advance on the basis of ability, knowledge and skill including open consideration of qualified applicants for initial appointment

# Minimum Qualifications Versus Competencies

- **Minimum qualifications** include previous experience, education, certification or licensing requirement; and knowledge, skill and ability
- **Competencies includes:**
  - **hard skills** such as education and/or certification, practical experience, KSA, and;
  - **soft skills** such as interpersonal communication, reliability and flexibility

# How to Identify the Best Qualified Candidate?

- Ask the experts – the hiring authorities
- Incorporate the standard practice of reviewing a class specification with a tool such as Polaris cards
- Develop a job analysis to identify which assessment tools will help meet the Department's specific needs

# Assessment Tools

- Tools most often used in identifying candidates include:
  - Written Exams
  - Application Appraisal
  - Qualifications Appraisal Panel Interview
  - Performance Exercise (job simulation) – AKA Assessment Exercise

# Validity

- Validation is a process of testing and documenting the effectiveness of an assessment tool in predicting job performance
- Does the test measure what it is intended to measure?
- Assessment tools should be appropriately designed, administered and validated

# Reliability

- Reliability assures that the Assessment Tool will give the same result each time it measures candidates' performance.
- Inter-Rater Reliability – Does the assessment tool produce consistent results among raters?

# Objectivity

- Are the rating criteria specific and measurable?
- Do they tend to eliminate subjective rater bias?
- Are raters applying the rating criteria consistently for each candidate – producing inter-rater reliability?

# Benefits of Valid and Reliable Assessment

- Improving selection process is key part of having employees oriented toward department's business goals
- Improves productivity
- Improves retention rates
- Improves overall quality
- Helps to defend assessment and selection, if challenged

# Selection Rules Procedure for List Certification

# Research

1. Re-Instatement Eligible List
2. County Preferred Eligible List
3. Transfer or Re-employment Eligible List
4. Current Eligible List
5. Current Eligible List of next class above within same Occupational Series  
(i.e. Use Secretary II for a Secretary I position)

# Types of Certification

- Certify appropriate number by formula – random
- Certify all names in the highest score group
- Selectively certify based on special job related qualifications (bilingual)

# Additional Eligibles (AKA Supplemental List)

- Request for additional eligibles to replace certified eligibles
  - Waived consideration
  - Rejected an offer of appointment

# Finish what you started.

- Document
- Close out certification list.
  - Remove hired employee

# Merit System Concepts Summary

- MS Principles evolved from legal actions (Remember the iceberg)
- Artificial Barriers
- Fair and Open Competition; Equal Access
- Consistency and Equal Opportunity
- Homework: Ask Yourself – How are MS Principles reflected in remainder of Selection Rules and recruitment practices?